

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFERY W. MILINICH, )  
Petitioner, ) No. C 09-2612 CRB (PR)  
vs. )  
CLIFF ALLENBY, Acting Director, ) ORDER GRANTING  
Respondent. ) MOTION TO RE-OPEN AND  
 ) RE-INSTATING ORDER TO  
 ) SHOW CAUSE  
 )  
 ) (Docket #17)

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Petitioner is civilly detained by the California Department of Hospitals (CDH) as a sexually violent predator (SVP). He claims that the state law governing civil commitments of SVPs violates various provisions of the federal constitution. Per order filed on January 13, 2010, the court found that, liberally construed, petitioner's claims appear cognizable in federal habeas under 28 U.S.C. § 2254 and ordered respondent to show cause why a writ of habeas corpus should not be granted. Respondent filed an answer and petitioner filed a traverse.

Per order filed on December 29, 2010, the court recognized that, in People v. McKee, 223 P.3d 566, 578-89 (Cal. 2010), the Supreme Court of California effectively overruled the California Court of Appeal’s denial of petitioner’s equal protection claim, and concluded that “the state courts must be given an opportunity to reconsider petitioner’s equal protection claim in light of McKee.” Docket #12 at 3. The court accordingly ordered as follows:

Petitioner shall file a habeas petitioner containing a McKee claim in state court within ninety days after he receives this order. This court will hold the present petition in abeyance pending the

1 completion of state-court consideration of petitioner's McKee  
2 claim. The clerk shall administratively close this action. The  
3 parties shall return to this court to reopen this action within ninety  
4 days after state court consideration of petitioner's McKee claim is  
concluded. Nothing further will take place in this matter until  
then.

5 Id.

6 Petitioner moves to reopen this action on the ground that he has exhausted  
7 state court remedies in connection with his McKee equal protection claim, i.e.,  
8 that SVPs are similarly situated to, yet impermissibly treated more harshly than,  
9 civil detainees who are categorized as mentally disordered offenders (MDOs) and  
10 as not guilty by reason of insanity (NGIs). Petitioner shows that, on March 27,  
11 2013, the Santa Clara County Superior Court denied his McKee equal protection  
12 claim and that, on July 10, 2013, the Supreme Court of California also rejected  
13 the claim. Good cause shown, petitioner's motion to reopen (docket #17) is  
14 GRANTED and the stay in this matter is lifted.

15 In order to expedite this matter, respondent shall file with the court and  
16 serve on petitioner, within 60 days of the issuance of this order, an amended  
17 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254  
18 Cases, showing cause why a writ of habeas corpus should not be granted.  
19 Respondent shall file with the answer and serve on petitioner a copy of all  
20 portions of the state trial record that have been transcribed previously and that are  
21 relevant to a determination of the issues presented by the petition. Petitioner may  
22 respond to the amended answer by filing an amended traverse with the court and  
23 serving it on respondent within 30 days of his receipt of the amended answer.

24 SO ORDERED.  
25

DATED: March 17, 2014

  
26 CHARLES R. BREYER  
27 United States District Judge